

(2014) 01 RAJ CK 0215

In the Rajasthan High Court

Case No : Civil Special Appeal (Writ) No. 881/2013

Hari Singh

APPELLANT

Vs

State of Rajasthan and Others

RESPONDENT

Date of Decision : 08-01-2014

Acts Referred:

Constitution of India, 1950 — Article 14, 16

Citation : (2014) 1 WLN 538

Hon'ble Judges : Pratap Krishna Lohra, J;Dinesh Maheshwari, J

Bench : Division Bench

Advocate : R.S. Choudhary, Advocate for the Appellant

Final Decision : Dismissed

Judgement

Pratap Krishna Lohra, J.—This intra-Court appeal is laid by the appellant/petitioner imploring annulment of judgment & order dt. 25.07.2013 passed by the writ Court dismissing his writ petition. Apposite facts for unearthing the lis involved in the matter are that in the year 1997 an advertisement was issued by the third respondent for making direct recruitment to the post of Teacher Grade-III and pursuant thereto appellant offered his candidature for selection by way of submitting his application form with requisite testimonials to show his eligibility. As per the version of the appellant, demonstrated from the writ petition, in his application form he has mentioned the total marks secured in B.S.T.C. practical and written examination but the marks obtained by him in B.S.T.C. practical examination were deleted by someone substituting higher percentage of marks in the application form i.e. 88.50%. In order to substantiate this positive assertion, the appellant has pleaded in the writ petition that he has disclosed his total marks secured in practical examination as 374 out of 700 marks. The application submitted by the appellant was scrutinized and considering his merit position on the basis of marks obtained by him in B.S.T.C. examination, he was offered appointment as Teacher Grade-III vide order dt. 27.09.1997. While serving the respondents in the capacity of Teacher Grade-III, a complaint was

lodged against the appellant by one Shri Rajeev Punia in the year 2005 alleging therein that the appellant has practiced fraud for obtaining the employment by mentioning incorrect description of the marks obtained by him in B.S.T.C. practical examination. The complainant with these allegations made a request for probing the matter. On receipt of the complaint the third respondent issued a notice to the appellant on 28.05.2005 calling upon him to submit his original certificates for scrutiny. When the said notice was not responded, yet another notice was issued on 28.04.2006 and pursuant thereto the appellant submitted his original certificate. Subsequent to that, a notice was issued to the appellant stating therein that he has entered the Government service as Teacher Grade-III by committing fraud/collusion soliciting his reply/explanation. In the notice, it was mentioned that the appellant has shown the marks obtained by him in practical examination of B.S.T.C. as 631 out of 700 instead of actual marks secured i.e. 374. Clarifying that if the actual marks secured by the appellant in B.S.T.C. examination are to be considered for adjudicating his merit position then he falls below par the last merit of the candidate appointed in General Category (Male). Responding to the said notice, the appellant submitted his reply/explanation. In his explanation the appellant has averred that neither he has committed any fraud, nor he has interpolated the certificate produced at the time of interview. While attributing role of someone else in alteration of his marks in the application, the appellant pleaded ignorance about the same. After considering the reply of the appellant, a further opportunity of personal hearing was afforded to him by sending a communication dt, 16.09.2006 while simultaneously making him available a copy of the application form. Subsequent thereto, the matter was enquired into and the allegation against the appellant was found proved. Considering the enquiry report, the services of the appellant were dispensed with by order dt. 28.12.2006. Assailing the order of termination, the appellant averred in the writ petition that the same is bad in law as no enquiry as contemplated under the Rajasthan Civil Services (Classification, Control & Appeal) Rules, 1958 was conducted against him. The appellant has also assailed the order dt. 28.12.2006 by categorizing the same as illegal and arbitrary in clear negation of Article 14 & 16 of the Constitution of India.

2. Before the writ Court, on behalf of the respondents, original application form of the appellant and the proceedings undertaken against him were produced. The learned Single Judge, after hearing the rival submissions and perusing the record, non-suited the appellant in his pursuit by holding that appellant alone is responsible for interpolation in the application form and it was on account of his false representation he has secured employment although he was not falling in merit. While dismissing the writ petition, the learned Single Judge has concluded that the appellant has secured employment by misrepresentation/manipulation possibly in collusion with the persons at the helm of affairs. Recording this finding, the learned Single Judge has declined to interfere in the matter in exercise of writ jurisdiction.

3. Learned counsel for the appellant Mr. R.S. Choudhary has argued that the

appellant has not played any role in the alleged interpolation of his marks in the application form and for that purpose he has precisely placed reliance on a factual report/enquiry report prepared by the Addl. District Education Officer, Elementary Education, Churu. Mr. Choudhary would contend that from the factual report/enquiry, it is crystal clear that the appellant has neither produced any forged marksheet, nor he has manipulated the marks obtained in B.S.T.C. Examination and therefore the impugned judgment and order passed by the learned Single Judge cannot be sustained. Mr. Choudhary has further submitted that the appellant has served for almost ten years and therefore when no fault is attributable to him for the alleged manipulation/interpolation in the application form, the impugned action is not at all desirable and by applying the basic tenets of equity in his favour, the impugned judgment as well as impugned action of the respondents are liable to be annulled.

4. We have heard the learned counsel, perused the impugned judgment & order and the other materials available on record.

5. Upon unfurling the controversy involved in the matter, two crucial issues have come to the fore for determination, viz., public employment vis-à-vis fundamental right and effect of longevity of employment founded on patent snag/misrepresentation, deceit or fraud on the touchstone of law of equity.

6. It is trite that adherence to the rule of equality in public employment is a basic feature of our Constitution and as such no employment de hors the mandate of Article 14 & 16 of the Constitution is permissible. In the present case, undisputedly on the strength of merit position of the appellant, his selection and consequential appointment to the post of Teacher Grade-III was not at all possible, but for the reason it came into offing due to some manipulation and maneuvering at the behest of someone in helm of affairs by depriving the legitimate claim of the other incumbent who was falling in merit. The overall picture, which has emerged out on appreciation of the materials on record, clearly indicates that on the basis of relative merit position of the appellant his selection/appointment cannot be legally sustained.

7. Reliance in this behalf can be profitably made to a judgment of Constitution Bench of Hon''ble Apex Court in case of Secretary, State of Karnataka and Others Vs. Umadevi and Others, wherein while emphasizing need for strict observance of Article 14 & 16 of the Constitution in the matter of Public Employment, Hon''ble Apex Court made following observations in Para 43 of the verdict.

43. Thus, it is clear that adherence to the rule of equality in public employment is a basic feature of our Constitution and since the rule of law is the core of our Constitution, a Court would certainly be disabled from passing an order upholding a violation of Article 14 or in ordering the overlooking of the need to comply with the requirements of Article 14 read with Article 16 of the Constitution. Therefore, consistent with the scheme for public employment, this Court while laying down the law, has necessarily to hold that unless the

appointment is in terms of the relevant rules and after a proper competition among qualified persons, the same would not confer any right on the appointee.

8. Now we would like to deal the second crucial issue on which the appellant has vociferously canvassed for seeking indulgence of this Court.

9. True it is that the factual report/enquiry report prepared by the Addl. District Education Officer, Elementary Education, Churu, has prima facie not indicted the appellant for alleged manipulation/interpolation in his B.S.T.C. Certificate showing embellished version of the marks secured by him but it is undeniable that the real beneficiary of this sort of manipulation and maneuvering is obviously the appellant himself. The manipulation and maneuvering in the marks secured by the appellant to his advantage has facilitated his employment as Teacher Grade-III, which was otherwise out of question. It is, in these circumstances, applying the normal rule of prudence, we are unable to sustain the plea of the appellant that he has not played any role in this dubious process. Even if the Enquiry Officer has not attributed direct role to the appellant and has bailed him out for the same, there is a strong legal presumption that someone in helm of affairs has acted at his behest in altering marks of B.S.T.C. to his advantage facilitating his appointment. This logical inference of ours also satisfies the yardsticks and parameters of the natural and usual conduct of a man under the given circumstances. Thus, applying the pristine maxim *fraus et jus nunquam cohabit* i.e. fraud and justice never dwell together - we do not feel persuaded to take a different view from the writ Court. The doctrine of equity, justice and good conscience sought to be invoked by the appellant on the anvil of longevity of his services of almost a decade also cannot come to his rescue for the simple reason that equity does not destroy the law, nor create it, but simply assists it. Hon'ble Supreme Court, in case of *R. Vishwanatha Pillai Vs. State of Kerala and Others*, , while dismissing a writ petition by an incumbent, who entered the service by producing a false caste certificate, declined to grant any indulgence to alter the order of dismissal by way of its substitution as compulsory retirement on principles of equity. The Hon'ble Apex Court made following observations in Para 19 of the verdict:

A person who seeks equity must come with clean hands. He, who comes to the Court with false claims, cannot plead equity nor the Court be justified to exercise equity jurisdiction in his favour. A person who seeks equity must act in a fair and equitable manner. Equity jurisdiction cannot be exercised in the case of a person who got the appointment on the basis of false caste certificate by playing a fraud. No sympathy and equitable consideration can come to his rescue. We are of the view that equity or compassion cannot be allowed to bend the arms of law in a case where an individual acquired a status by practising fraud.

10. As the very entry of the appellant in the services is contrary to the equality clause enshrined under Art. 14 & 16 of the Constitution of India, the doctrine of equity cannot be invoked to perpetuate illegality. Thus, in totality, we are disinclined to interfere with the impugned judgment and order passed by the

learned Single Judge in the limited scope of judicial review in this intra-Court appeal. The upshot of the above discussion is that this appeal lacks merit and the same is accordingly dismissed.